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9 **UNITED STATES DISTRICT COURT**
10 **CENTRAL DISTRICT OF CALIFORNIA**

11 FABRIC SELECTION, INC., a
12 California Corporation,

13 Plaintiff,

14 v.

15 ZULILY, LLC, a Delaware limited
16 liability company; TICKLED TEAL,
17 LLC, a California limited liability
18 company; BENEDICT'S GOODS, LLC,
19 a California limited liability company,
20 individually and doing business as
21 "Amaryllis Apparel"; DESIGN WEST
22 MODE USA LLC, a California limited
liability company, individually and doing
business as "SuzanneBetro"; and DOES
1 through 10,

23 Defendants.
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Case No.:

PLAINTIFF'S COMPLAINT FOR:

1. COPYRIGHT INFRINGEMENT;
AND
2. VICARIOUS AND/OR
CONTRIBUTORY COPYRIGHT
INFRINGEMENT

Jury Trial Demanded

1 Plaintiff, FABRIC SELECTION, INC. (hereinafter “FSI” or “Plaintiff”), by
2 and through its undersigned attorneys, hereby prays to this honorable Court for
3 relief based on the following:

4 **JURISDICTION AND VENUE**

5 1. This action arises under the Copyright Act of 1976, Title 17 U.S.C., §
6 101 *et seq.*

7 2. This Court has federal question jurisdiction under 28 U.S.C. § 1331 and
8 1338 (a) and (b).

9 3. Venue in this judicial district is proper under 28 U.S.C. § 1391(c) and
10 1400(a) in that this is the judicial district in which a substantial part of the acts and
11 omissions giving rise to the claims occurred.

12 **PARTIES**

13 4. FSI is a corporation organized and existing under the laws of the State
14 of California with its principal place of business in Commerce, California.

15 5. Plaintiff is informed and believes and thereon alleges that Defendant
16 ZULILY, LLC, (“ZULILY”) is a Delaware limited liability company with its
17 principal place of business located at 300 Deschutes Way SW, Suite 304,
18 Tumwater, WA 98501, and is doing business in and with the State of California.

19 6. Plaintiff is informed and believes and thereon alleges that Defendant
20 ZULILY owns and operates <https://www.zulily.com>.

21 7. Plaintiff is informed and believes and thereon alleges that Defendant
22 TICKLED TEAL, LLC, (“TICKLED TEAL”) is a California limited liability
23 company with its principal place of business located 1532 El Camino Del Teatro,
24 La Jolla, CA 92037, and is doing business in and with the State of California

25 8. Plaintiff is informed and believes and thereon alleges that Defendant
26 BENEDICT’S GOODS LLC (“BENEDICT”), doing business as “Amaryllis
27 Apparel,” is a California limited liability company with its principal place of
28 business located at 15261 Barranca Pkwy, Irvine, CA 92618, and is doing business
in and with the State of California.

1 9. Plaintiff is informed and believes and thereon alleges that Defendant
2 Design West Mode USA LLC (“DESIGN WEST”), doing business as “Suzanne
3 Betro,” is a California limited liability company with its principal place of business
4 located at 13871 Manzanita Rd. NE, Bainbridge Island, WA 98110, and is doing
5 business in and with the State of California.

6 10. Plaintiff is informed and believes and thereon alleges that Defendants
7 DOES 1 through 10, inclusive, are other parties not yet identified who have
8 infringed Plaintiff’s copyrights, have contributed to the infringement of Plaintiff’s
9 copyrights, or have engaged in one or more of the wrongful practices alleged
10 herein. The true names, whether corporate, individual or otherwise, of Defendants
11 1 through 10, inclusive, are presently unknown to Plaintiff, which therefore sues
12 said Defendants by such fictitious names, and will seek to leave to amend this
13 Complaint to show their true names and capacities when same have been
14 ascertained.

15 11. Plaintiff is informed and believes and thereon alleges that at all times
16 relevant hereto, each of the Defendants was the agent, affiliate, officer, director,
17 manager, principal, alter-ego, and/or employee of the remaining Defendants and
18 was at all times acting within the scope of such agency, affiliation, alter-ego
19 relationship and/or employment; and actively participated in or subsequently
20 ratified and/or adopted each of the acts or conduct alleged, with full knowledge of
21 all the facts and circumstances, including, but not limited to, full knowledge of
22 each violation of Plaintiff’s rights and the damages to Plaintiff proximately caused
23 thereby.

24 12. ZULILY, BENEDICT, DESIGN WEST, and Does 1-10 will
25 collectively be referred to as “Defendants” herein.

26 **CLAIMS RELATED TO DESIGN SE40528**


27 13. Prior to the conduct complained of herein, FSI composed an original
28 two-dimensional artwork for purposes of textile printing. Plaintiff allocated the
design FSI’s Internal Design Number SE40528 (“Subject Design A”).

14. Subject Design A is an original creation of FSI and/or FSI's design team, and is, and at all relevant times, was owned exclusively by FSI.

15. FSI registered Subject Design A with the United States Copyright Office.

16. FSI is informed and believes and thereon alleges that, without FSI's authorization, Defendants created, sold, manufactured, caused to be manufactured, imported and/or distributed fabric and/or garments comprised of fabric featuring a design which is identical to or substantially similar to the Subject Design A ("Accused Product A"). Such Accused Product includes, but is not limited to, garments bearing an illicit copy of Subject Design SE40528 demarcated Style Nos. TICKLED TEAL_178098-2-NP/drwstrng skirt and TICKLED TEAL_178174-1-5, sold on Zulily.com with labeling indicating such garments were sold by or for ZULILY and TICKLED TEAL.

17. Below is a comparison of the Subject Design A and an exemplar of Accused Product A (detail and garment):

<u>SUBJECT DESIGN A</u>	<u>ACCUSED PRODUCT A</u>
<p><u>SE40528</u></p> 	<p><u>TICKLEDTEAL 178174-1-5</u></p> <p><u>Detail</u></p> 



CLAIMS RELATED TO DESIGN SE21199

18. Prior to the conduct complained of herein, FSI composed an original two- dimensional artwork for purposes of textile printing. Plaintiff allocated the design FSI’s Internal Design Number SE21199 (“Subject Design B”).

19. Subject Design B is an original creation of FSI and/or FSI’s design team, and is, and at all relevant times was, owned exclusively by FSI.

20. FSI registered Subject Design B with the United States Copyright Office.

21. FSI is informed and believes and thereon alleges that, without FSI’s authorization, Defendants, and each of them, created, sold, manufactured, caused to be manufactured, imported and/or distributed fabric and/or garments comprised of fabric featuring a design which is identical to or substantially similar to the Subject Design B (“Accused Product B”). Such Accused Product includes, but is not limited to, garments bearing an illicit copy of Subject Design SE21199 demarcated Style No. AMARVILIS_ST-10492BPF-1_A.ORAL81ACKP M, sold

on Zulily.com with labeling indicating such garments were sold by or for ZULILY and BENEDICT.

22. Below is a comparison of the Subject Design B and an exemplar of Accused Product B (detail and garment):

<u>SUBJECT DESIGN B</u>	<u>ACCUSED PRODUCT B</u>
<p><u>SE21199</u></p> 	<p><u>AMARYILIS ST-10492BPF-1_A.ORAL81ACKPM</u> <u>Detail</u></p> 
	<p><u>Garment</u></p> 

CLAIMS RELATED TO DESIGN SE40509

23. Prior to the conduct complained of herein, FSI composed an original two- dimensional artwork for purposes of textile printing. Plaintiff allocated the design FSI’s Internal Design Number SE40509 (“Subject Design C”).

24. Subject Design C is an original creation of FSI and/or FSI’s design team, and is, and at all relevant times was, owned exclusively by FSI.

25. FSI registered Subject Design C with the United States Copyright Office.

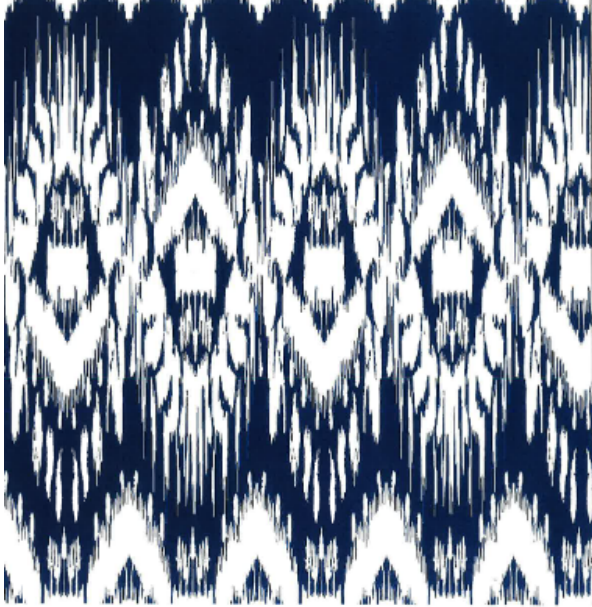
26. FSI is informed and believes and thereon alleges that, without FSI’s authorization, Defendants, and each of them, created, sold, manufactured, caused to be manufactured, imported and/or distributed fabric and/or garments comprised of fabric featuring a design which is identical to or substantially similar to the Subject Design C (“Accused Product C”). Such Accused Products includes, but is not limited to, garments bearing an illicit copy of Subject Design SE40509 demarcated Style No. U2504235/Aqua Geometric Notch Neck Empire-Waist Dress, sold on Zulily.com with labeling indicating such garments were sold by or for ZULILY and DESIGN WEST.

27. Below is a comparison of the Subject Design C and an exemplar of Accused Product C (detail and garment):

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<u>SUBJECT DESIGN C</u>	<u>ACCUSED PRODUCT C</u>
<u>SE40509</u> 	<u>Aqua Geometric Notch Neck Empire-Waist Dress</u> <u>Detail</u>  <u>Garment</u> 

CLAIMS RELATED TO DESIGN SE40354

28. Prior to the conduct complained of herein, FSI composed an original two- dimensional artwork for purposes of textile printing. Plaintiff allocated the design FSI’s Internal Design Number SE40354 (“Subject Design D”).

29. Subject Design D is an original creation of FSI and/or FSI’s design team, and is, and at all relevant times was, owned exclusively by FSI.

1 30. FSI registered Subject Design D with the United States Copyright
2 Office.

3 31. FSI is informed and believes and thereon alleges that, without FSI's
4 authorization, Defendants, and each of them, created, sold, manufactured, caused
5 to be manufactured, imported and/or distributed fabric and/or garments comprised
6 of fabric featuring a design which is identical to or substantially similar to the
7 Subject Design D ("Accused Product D"). Such Accused Products includes, but is
8 not limited to, garments bearing an illicit copy of Subject Design SE40354
9 demarcated Style Nos. Geometric Yoke Neck Sleeveless Tunic - Women & Plus/
10 U2502321 and Scarf-Print Wrap Headband Set/102562464, sold on Zulily.com
11 with labeling indicating such garments were sold by or for ZULILY and DESIGN
12 WEST.

13 32. Below is a comparison of the Subject Design D and an exemplar of
14 Accused Product D (detail and garment):

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<u>SUBJECT DESIGN D</u>	<u>ACCUSED PRODUCT D</u>
<p data-bbox="435 344 558 378"><u>SE40354</u></p> 	<p data-bbox="818 260 1406 323"><u>Geometric Yoke Neck Sleeveless Tunic - Women & Plus/ U2502321</u></p> <p data-bbox="1068 361 1153 394"><u>Detail</u></p>  <p data-bbox="1052 1178 1169 1211"><u>Garment</u></p> 

1 33. The above comparison makes apparent that the elements,
2 composition, colors, arrangement, layout, and appearance of the designs at issue
3 are substantially similar.

4 34. FSI is informed and believes and thereon alleges that Defendant, and
5 each of them, have committed copyright infringement with actual or constructive
6 knowledge of FSI's rights, and/or in blatant disregard for FSI's rights, such that
7 said acts of copyright infringement were, and continue to be, willful, intentional
8 and malicious, subjecting Defendants, and each of them, to liability for statutory
9 damages under Section 504(c)(2) of the Copyright Act in the sum of up to one
10 hundred fifty thousand dollars (\$150,000.00) per infringement.

11 **FIRST CLAIM FOR RELIEF**

12 (For Copyright Infringement - Against All Defendant, and Each)

13 35. FSI repeats, realleges, and incorporates herein by reference as though
14 fully set forth, the allegations contained in the preceding paragraphs of this
15 Complaint.

16 36. FSI is informed and believes and thereon alleges that Defendants, and
17 each of them, had access to Subject Designs A through D, including, without
18 limitation, through (a) access to FSI's showroom and/or design library; (b) access
19 to illegally distributed copies of the Subject Designs by third-party vendors and/or
20 Doe Defendants, including without limitation international and/or overseas
21 converters and printing mills; (c) access to FSI's strike-offs and samples, and (d)
22 garments manufactured and sold to the public bearing fabric lawfully printed with
23 the Subject Designs by FSI for its customers.

24 37. FSI is informed and believes and thereon alleges that one or more of
25 the Defendants manufactures garments and/or is a garment vendor. FSI is further
26 informed and believes and thereon alleges that said Defendant(s) has an ongoing
27 business relationship with Defendant retailers, and each of them, and supplied
28 garments to said retailers, which garments infringed the Subject Designs in that

1 said garments were composed of fabric which featured unauthorized print
2 design(s) that were identical or substantially similar to the Subject Designs or were
3 an illegal derivation or modification thereof.

4 38. FSI is informed and believes and thereon alleges that Defendants, and
5 each of them, infringed FSI's copyrights by creating, making, and/or developing
6 directly infringing and/or derivative works from the Subject Designs and by
7 producing, distributing and/or selling garments which infringe the Subject Designs
8 through a nationwide network of retail stores, catalogues, and through on-line
9 websites.

10 39. Due to Defendants' acts of infringement, FSI has suffered substantial
11 damages to its business in an amount to be established at trial.

12 40. Due to Defendants' acts of infringement, FSI has suffered general and
13 special damages in an amount to be established at trial.

14 41. Due to Defendants' acts of copyright infringement as alleged herein,
15 Defendants, and each of them, have obtained direct and indirect profits they would
16 not otherwise have realized but for their infringement of the Subject Designs. As
17 such, FSI is entitled to disgorgement of Defendants' profits directly and indirectly
18 attributable to Defendants' infringement of FSI's rights in the Subject Designs in
19 an amount to be established at trial.

20 42. FSI is informed and believes and thereon alleges that Defendants, and
21 each of them, have committed acts of copyright infringement, as alleged above,
22 which were willful, intentional, and malicious, which further subjects Defendants,
23 and each of them, to liability for statutory damages under Section 504(c)(2) of the
24 Copyright Act in the sum of up to one hundred fifty thousand dollars
25 (\$150,000.00) per infringement. Within the time permitted by law, FSI will make
26 its election between actual damages and statutory damages.

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SECOND CLAIM FOR RELIEF

(For Vicarious and/or Contributory Copyright Infringement - Against All Defendants)

43. FSI repeats, realleges, and incorporates herein by reference as though fully set forth, the allegations contained in the preceding paragraphs of this Complaint.

44. FSI is informed and believes and thereon alleges that Defendants knowingly induced, participated in, aided and abetted in, and profited from the illegal reproduction and/or subsequent sales of garments featuring the Subject Designs as alleged herein.

45. FSI is informed and believes and thereon alleges that Defendants, and each of them, are vicariously liable for the infringement alleged herein because they had the right and ability to supervise the infringing conduct and because they had a direct financial interest in the infringing conduct.

46. By reason of the Defendants', and each of their acts of contributory and vicarious infringement as alleged above, FSI has suffered and will continue to suffer substantial damages to its business in an amount to be established at trial, as well as additional general and special damages in an amount to be established at trial.

47. Due to Defendants', and each of their acts of copyright infringement as alleged herein, Defendants, and each of them, have obtained direct and indirect profits they would not otherwise have realized but for their infringement of the Subject Designs. As such, FSI is entitled to disgorgement of Defendants' profits directly and indirectly attributable to Defendants' infringement of Plaintiff's rights in the Subject Designs, in an amount to be established at trial.

48. FSI is informed and believes and thereon alleges that Defendants, and each of them, have committed acts of copyright infringement, as alleged above, which were willful, intentional, and malicious, which further subjects Defendants, and each of them, to liability for statutory damages under Section 504(c)(2) of the

1 Copyright Act in the sum of up to one hundred fifty thousand dollars (\$150,000.00)
2 per infringement. Within the time permitted by law, Plaintiff will make its election
3 between actual damages and statutory damages.

4 **PRAYER FOR RELIEF**

5 Wherefore, FSI prays for judgment as follows:

6 **Against All Defendants**

7 **With Respect to Each Claim for Relief**

- 8 a. That Defendants, their agents and employees be enjoined from
9 infringing FSI's copyrights in any manner, specifically those for the
10 Subject Designs;
- 11 b. That FSI be awarded all profits of Defendants' plus all losses of FSI,
12 plus any other monetary advantage gained by the Defendants through
13 their infringement, the exact sum to be proven at the time of trial, or,
14 if elected before final judgment, statutory damages as available under
15 the Copyright Act, 17 U.S.C. §§ 101, *et seq.*;
- 16 c. That a trust be imposed over the revenues derived by Defendants, and
17 each of them, through the sales or distribution of the products at issue;
- 18 d. That Plaintiff be awarded its attorneys' fees as available under the
19 Copyright Act U.S.C. § 101 *et seq.*;
- 20 e. That Defendants, and each of them, account to Plaintiff for their
21 profits and any damages sustained by Plaintiff arising from the
22 foregoing acts of infringement;
- 23 f. That FSI be awarded pre-judgment interest as allowed by law;
- 24 g. That FSI be awarded the costs of this action; and
- 25 h. That FSI be awarded such further legal and equitable relief as the
26 Court deems proper.

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1 FSI demands a jury trial on all issues so triable pursuant to Fed. R. Civ. P.
2 38 and the 7th Amendment to the United States Constitution.

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4 Respectfully submitted,
5 Dated: January 5, 2024 By: /s/ Trevor W. Barrett
6 Trevor W. Barrett, Esq.
7 Frank R. Trechsel, Esq.
8 DONIGER / BURROUGHS
9 *Attorneys for Plaintiff*
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